

SAN FRANCISCO RESIDENTIAL RENT STABILIZATION
AND ARBITRATION BOARD

SIX-MONTH REPORT TO THE MAYOR
AND THE BOARD OF SUPERVISORS



JANUARY 31, 1980

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I. INTRODUCTION

The Residential Rent Stabilization and Arbitration Ordinance was passed as emergency legislation by a unanimous vote of the Board of Supervisors (11-0) on June 12, 1979, and signed into law immediately by Gordon Lau, Acting Mayor. Mayor Feinstein appointed the Board members and alternates on July 23, 1979.

The decision to accept petitions for arbitration immediately following passage of the Ordinance created a serious problem for the Rent Board. False expectations were raised that an immediate remedy was available when actually no mechanism was in place to hold hearings until after the Board's Rules and Regulations were adopted on August 10, 1979, and the first hearings were held on August 23, 1979.

Between June 12th and August 23rd, a flood of petitions flowed into City Hall and the Rent Board offices at 170 Fell Street. Consequently, a backlog of petitions accumulated which led to unnecessary criticism of the Rent Board's effectiveness. That the Rent Board was able to overcome this obstacle was largely the result of the considerable efforts and thoughtful guidance of Gil Brigham, the Interim Director. The Rent Board is indebted to the Mayor's Office for the loan of such a highly capable administrator at what was a most crucial time.

II. COMMISSIONERS

The Ordinance sets forth the composition of the Board to include two landlords, two tenants, and one person who is neither a landlord nor a tenant. Each

Board member has a specific alternate having the same qualifications as the member. The eight current Commissioners and alternates represent eight different Supervisorial Districts and reflect the diverse ethnic population of the City. Anne Kronenberg, tenant representative on the Board, resigned on October 5, 1979. Roy Eisenhardt, landlord representative and President of the Board, resigned on January 7, 1980.

The concept of two landlords, two tenants, and one neutral is working very well due to the Commissioners' willingness and ability to work together to reach effective compromises. The Commissioners regard it as their responsibility to administer the Ordinance fairly rather than be advocates for the particular constituencies matching their designations. Therefore, the polarization expected by some does not exist.

The maximum compensation Board members may receive in a month is \$750.00. This is arrived at as follows: \$25.00 for a meeting which lasts two hours or less; \$50.00 for a meeting which lasts from two to six hours; and, \$75.00 for a meeting which lasts more than six hours in a single twenty-four hour period.

The Board members met an average of twice a week until the end of August when meetings were held weekly. Once hearings were being held and findings received, the Board began to receive numerous appeals. Recently the Board has had to meet as often as four times in a week to review appeals, hold hearings and continue the dialogue with hearing officers.

III. REVIEW OF STATISTICS

Appendix A shows a comparison of Statistical Reports through January 31, 1980.

a) Petitions filed: As of January 31, 1980, there were 1063 petitions filed with the Rent Board, of which 1013 were initiated by tenants, and 50 by landlords. This breakdown of 95% tenants and 5% landlords has remained constant. However, the 50 landlord petitions account for 351 tenants. In addition, during the month of November, following the defeat of Proposition R, nine landlord petitions dealing with 143 apartments were filed indicating that landlords were no longer concerned about rents being rolled back and were more willing to use the process for prior approval of rent raises.

Broken down by month, there were 217 petitions submitted in July, 194 in August, 165 in September, 154 in October, 79 in November, 123 in December, and 131 in January.

b) Pre-Hearing settlements: The percentage of pre-hearing settlements has increased from 14% to 31% of all petitions filed. The Board considers pre-hearing settlements a sign of the success of the Ordinance. As more tenants and landlords become aware of the law, they are complying with it.

Of the 330 pre-hearing settlements as of January 31, 1980, we are aware that 30 of these tenants did move, 28 cases were no-shows at a scheduled hearing (assuming settlement), and 8 were dismissed or withdrawn because they were not within the jurisdiction of the Rent Board.

c) Arbitration Hearings: From August 23, 1979 through January 30, 1980, hearings were held for 608 cases, which represent 83% of the Caseload. Only 70 cases (9%) are pending scheduling. At this time, the backlog has been cleared and the hearings are being held within the statutory time limits.

d) Findings Received: The Findings of Fact and Conclusions of Law received to this date effect 573 tenants. The findings favored tenants in 512 cases (89%), meaning that the rent increase was not allowed above the guidelines or that the rent the landlord sought to impose was reduced. In 61 cases (11%), landlords were favored, meaning they were allowed to impose all, or most, of the rent increase.

e) Appeals: There have been 37 appeals to the Board, of which 10 were accepted de novo, 2 were accepted on the record, 5 were remanded to hearing officers, and 15 were denied. The Board has not yet voted on 4 appeal requests.

Due to numerous inquiries from hearing officers and the nature of the appeals to the Board, it became obvious that a large percentage of petitions received from tenants were the direct consequence of a landlord seeking to impose an above-guideline rent increase due to a substantial increase in debt service resulting from a recent purchase. In fact, 15 of the 37 appeal requests fall into this category. Eight of the first twelve appeals (66 2/3%) were based on an increased debt service. Of the remaining 25 appeals, only 7 (28%) fall into this category, indicating the lessening of this problem as knowledge of the Board's attitude toward debt service spread among investors, following distribution of a memorandum issued by the Rent Board on October 9, 1979 to clarify Section 37.8 (3) (c) (1) of the Ordinance. The major thrust is:

A rent increase in excess of the guideline amount shall be justified under Section 37.8 (3) (c) (1) on the basis of increased debt service, incurred at the time of acquisition of the property, only if and to the extent the landlord established to the satisfaction of the hearing officer that the rentals charged for units in the building, both at the time of the acquisition, and at the time of the hearing, are significantly below the market rent for comparable units in the general area. Absent such a showing, such increased debt service will generally not be viewed as sufficient justification for a rental increase in excess of the guidelines.

Few landlords have borne this burden of proof and have relied too heavily on market rents which reflect what apartments are renting for to new tenants rather than comparable rents being paid by other long-term tenants. The Board recognizes and accepts responsibility for the moderating effect this will have on purchase prices of residential income property.

f) Appeal decisions: Of the 11 appeals the Board has heard, one case was settled by the parties themselves, two are pending a decision, and decisions have been issued in eight cases. One appeal hearing is scheduled. Six of the decisions of the Board favored tenants in that the rent the landlord sought to impose was reduced. Two decisions favored the landlord.

IV. PROCEDURE

A petition for arbitration is filed by mail or in person by either a tenant who has received a rent increase above the guidelines in the Ordinance, or a landlord who wishes to raise rents above the guideline amounts. A tenant petition must be filed prior to the effective date of the increase as stated in the landlord's notice. (This is a criticism of the Ordinance because many people are not aware of their rights until the filing date has passed.) A \$10.00 per unit filing fee is required, except that it may be waived by a tenant signing a statement of indigency. Following the filing of the petition(s), a hearing is scheduled by the Rent Board. When several tenants petition from the same building or from more than one building with the same owner, petitions have been consolidated into one hearing as much as possible. A notification of hearing date, time, and place is mailed to the tenant(s) and landlord(s) at least ten days before the scheduled hearing.

Once the petition is filed, regardless of who files the petition, the burden of proof is on the landlord to justify the rent increases above the guideline amounts.

Acceptable justifications include capital improvements, increased operating expenses, increased maintenance expenses, or proof of "comparables," i.e., comparable units in the same general area are significantly higher than the current rents in question.

If no conciliation between the parties is reached at the hearing, the Hearing Officer submits Findings of Fact and Conclusions of Law within 10 days in writing. The tenant or landlord has fifteen days from the date of mailing of the Findings to appeal the case to the Rent Board by submitting a letter indicating the reasons for the appeal. An appeal, if accepted, must be heard within 30 days of receipt and can be either on the record or de novo. A decision must be forthcoming within 45 days following the appeal hearing.

V. GEOGRAPHY

Appendix B shows the geographical distribution of the residential properties involved in the petitions.

The Diamond Heights/Twin Peaks area has generated the greatest number of petitions. This is attributed to the fact that one large property owner, Bay Area Rentals, sold approximately 500 units contained in about 40 buildings on Crestline, Gardenside, and Parkridge, just prior to the enactment of the Moratorium (April 15, 1979 to June 14, 1979). Of the 120 petitions from this area, 79 are from these three streets.

Based on the number of complaints received by the Mayor's Citizen Assistance Center prior to enforcement of the Ordinance, South of Market, the Mission, and the Tenderloin were expected to generate the most petitions for arbitration. That this did not happen suggested to some that tenants in these areas were either

unaware of the Ordinance or were reluctant to use the system. While this conclusion has merit, there are many tenant advocates in these areas, i.e. Hospitality House, S.F.N.L.A.F., San Francisco Tenants Union, Renters Alliance, Legal Aid to the Elderly who are very conversant with the Ordinance and have represented many tenants at arbitration hearings. Legal Aid to the Elderly designed and produced the first effective pamphlet explaining the Ordinance and was extensively used in these areas. The less than expected number of petitions is only partially explained by tenant reluctance to use the system, even with legal assistance. It is reasonable to conclude that in general, landlords are complying with the law and there have been no major transfers of property in these areas. The correlation between the number of petitions in certain areas and the number of purchases prior to the enactment of the Ordinance cannot be stressed too strongly.

VI. HEARINGS

Hearings are usually scheduled two days a week, with as many as four hearings going on at one time. This often requires staff members to vacate their offices during part of the day. The physical space is an area approximately 600 square feet divided by partial partitions which do not reach the ceiling and do not keep noise levels down. In addition to four staff members working, there can be as many as twenty-five people participating in simultaneous hearings, plus the normal walk-in traffic, the constant telephone calls, the busy street traffic, and the occasional, but frequent, fire engines from the station two blocks away. While this environment forces parties closer together in order to hear each other talk, it is not an acceptable long-term arrangement. Even Board meetings which generally must be conducted in the Board's offices are regularly interrupted by street noise and the regular

staff work that must go on.

Many of the tenants and landlords do bring attorneys with them. Sometimes the Tenants Union or People's Law School will send non-attorney advocates. Legal Assistance to the Elderly and San Francisco Neighborhood Legal Assistance Foundation (especially the Western Addition Office) have represented numerous clients. Private attorneys have also been present with both tenants and landlords. Many building managers or property managers have been representing owners.

Some of the hearings have been highly emotional. However, many have been so peaceful that the dispute is resolved, with the assistance of the Hearing Officer, and a Stipulated Agreement rather than Conclusion of Law is written up by the Hearing Officer.

VII. HEARING OFFICERS

The Bar Association of San Francisco recruited members to serve as volunteer Hearing Officers. Of the hundred or so who responded, about half attended the briefing sessions held in August, and formed the pool of active Hearing Officers. As they spread the word to their colleagues, additional attorneys have volunteered. Recent letters have been sent to the initial list, and several who had an early interest but were not contacted after August have since become part of the active list. There are currently about 90 active Hearing Officers.

The budget provides for paying Hearing Officers, and since the agreement with the Bar Association was to provide volunteers until the backlog of cases was completed, the Rent Board agreed to begin paying Hearing Officers on January 22, 1980 at the rate of \$30.00 per hearing, with higher rates for larger cases that take longer to hear.

The service provided by the Hearing Officers is a very significant part of the entire process. The better job they do in writing their Findings, and the greater uniformity in their interpretation and application of the Ordinance, hopefully will lead to fewer appeals and certainly fewer appeals the Rent Board need accept. The decision to introduce the nominal fee was made with these goals in mind. In addition, there would be less turnover and less difficulty in maintaining enthusiasm.

VIII. REAL ESTATE CERTIFICATION

The Ordinance provides that a landlord MAY file with the Real Estate Department an application for certification of rent increases in excess of the guidelines based on capital improvements and rehabilitation work. However, to date, only 5 such applications have been filed.

Some Hearing Officers have denied any rent increase based on capital improvements if there is no certification from the Real Estate Department. In view of the low number of applications for certification, this policy is being evaluated. The fee for such certification (beginning at \$280.00) is a deterrent. However, the fee is necessary to cover the direct cost of sending an independent estimator to the site and processing the application, and it is included in the amortization of costs that the landlord incurs. (The fee schedule may be revised by the Director of the Department of Real Estate if it does not correspond to actual expenses.)

A number of citizens and Hearing Officers have recommended that the Board amend its Rules and Regulations to clarify the interpretation of the Ordinance that certification by the Department of Real Estate is required before any rehabilitation or capital improvement expenses may be passed on to tenants. The Board

is considering this proposal. However, the sense of the Board is that such a requirement would not be appropriate where only a few units are being considered by the Board.

IX. COMMUNITY OUTREACH

The pre-election debate over Proposition R focused so heavily on the existing Ordinance that the community was well informed about the Residential Rent Stabilization and Arbitration Board. Hundreds of thousands of dollars were spent by the Yes on R and No on R campaigns comparing the existing Ordinance to Proposition R. This included press conferences, Public Service Announcements, Brochures, Radio and Television coverage, newspaper articles and editorials, plus over 100,000 "Renters Know Your Rights" pamphlets mailed directly to tenants.

In the near future, Pacific Gas and Electric will be enclosing a small flyer in their San Francisco bills; brochures, forms and notices will be printed in other languages and distributed at key locations; and community meetings will continue to be held in various neighborhoods.

X. STAFF

Gil Brigham became the Interim Director on July 25, 1979, and remained until after Donna Solomon became the first Executive Director on October 2, 1979. John Blackburn has been the Senior Staff Assistant since August 6, 1979. A Clerk Typist, Rosa Haydn Zanipatin, began working on October 10, 1979. Tyrone Mitchell was hired as a CETA employee on October 31, 1979. Diane Whitney, a third-year law student from Golden Gate University was on a work-study contract.

There is not sufficient staff to answer all telephone calls, take care of all of the people who come in for information, and provide proper research and other support services to the Commissioners. Many people who come into the office do so after being unable to make contact on the telephone. Before long, the Rent Board will bring specific budget and personnel requests to the Mayor and the Board of Supervisors to remedy this situation.

XI. BUDGET

The \$85,236.00 allocated by the Board of Supervisors has been expended as follows:

Salaries	\$32,849.00
Commissioners Fees	5,975.00
Student Intern	240.00
Telephone	1,314.00
Xerox	2,076.00
Supplies	3,089.00
Rent	1,920.00
Real Estate Department	2,000.00
Court Reporters	1,278.00
Postage	1,038.00
Reproduction	316.00
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TOTAL	\$52,095.00

Because Commissioners' fees were not paid at the maximum allotted, and especially because Hearing Officers have been performing pro bono, funds are available for a public information program. The Board has voted to contract with

three of the Hearing Officers (who have experience in training) to develop a Manual for Hearing Officers at a cost not to exceed \$2,000.00. With the decision to begin paying Hearing Officers, \$1,000.00 has been encumbered for January 22, 23, 29, and 30, 1980.

Revenues generated by the filing fee as provided in Section 37.8 (b) (1) (A) have been deposited with the Controller and Treasurer in the amount of \$9,872.45.

XII. RECOMMENDATIONS FROM THE PUBLIC

Although the Ordinance is working well to stabilize rents in San Francisco, there are several areas that need to be strengthened. At the regular meeting of the Rent Board on December 6, 1979, three hours of public testimony were presented regarding suggested amendments by representatives of San Francisco Neighborhood Legal Assistance Foundation, Legal Assistance to the Elderly, Central City Hospitality House, San Franciscans for Affordable Housing, Apartment House Associations Consolidated, Bureau of Building Inspection, Tenants Union, Renters Alliance, and People's Law School. Two topics were addressed repeatedly:

a) Vacancy Decontrol: The major area of concern is the issue of vacancy decontrol and how it leads to the abuse of the eviction process. Because a unit is decontrolled when a tenant moves, some landlords are motivated to evict tenants just to raise rents. Although there are specific reasons in the Ordinance that qualify as "Just Cause" for eviction, there is no process for assuring that these evictions are done in "good faith." Even tenants who are aware of their rights have no way to prove whether a landlord is actually going to move in a relative or perform the required amount of work to qualify for substantial rehabilitation.

Suggestions from the public for dealing with this problem include:

- a) extending the "good cause" to evictions where there is no court action;
- b) providing a cause of action for damages for evictions (whether or not by court action) in violation of the Ordinance;
- c) providing financial remedies for any tenant who is forced to move involuntarily;
- d) extending guidelines for rent increases to units which are vacated involuntarily; and,
- e) allowing the Rent Board to hold a "show cause" hearing for certain reasons listed under the "just cause" section.

b) Time of Filing: Because a tenant petition must be filed with the Board before the rent increase becomes effective, many tenants lose their right to protest their rent increase because they are not aware of their rights. A reasonable and often suggested remedy is to allow tenants to file petitions with the Rent Board at any time, provided that the decision on the petition would be effective only from the date of filing.

XIII. CONCLUSIONS

1. The number of petitions filed is a very low percentage of the 220,000 rental units in San Francisco, despite the tremendous media coverage during the November election. This leads to the tentative conclusion that the Ordinance is being widely, although not completely, followed. The apparent fact that most decisions regarding rent increases are made by the landlords and tenants themselves has been a strength of the Ordinance.

2. The high percentage of decisions being handed down in favor of tenants has given notice to tenants and to present and prospective landlords that exceptions to the guidelines for rent increases will not lightly be given.

3. The greatest number of petitions and appeals are generated from the sale

of property prior to passage of the Ordinance. Investors are on notice that they no longer can purchase residential property with the intention of raising rents to offset a negative cash flow.

4. A variety of amendments, some substantial and some of only a house-keeping nature, are needed to have the Residential Rent Stabilization and Arbitration Ordinance better serve its purpose. The Board looks forward to participation with the Mayor and the Board of Supervisors in the consideration and preparation of these amendments.

5. A couple more staff people and some more space are needed for the Rent Board and its staff to administer, interpret, and enforce the Ordinance with the thoroughness, promptness, and dignity appropriate to a San Francisco Commission.

6. In retrospect it would have been wiser to have continued the Moratorium until the Rent Board members were appointed, given time to adopt rules and regulations, hire staff, and train Hearing Officers.

7. All petitions from Trinity Properties (Sangiocomo) were settled without the need of arbitration.

	9/24/79		10/19/79		11/13/79		12/14/79		1/31/80	
<u>PETITIONS FILED</u>	560	100%	687	100%	760	100%	869	100%	1063	100%
Tenant Initiated	540	96%	664	97%	734	97%	833	96%	1013	95%
Landlord Initiated	20	4%	23	3%	27	4%	36	4%	50	5%
<u>PRE-HEARING SETTLEMENTS</u>	80	14%	108	16%	164	22%	264	30%	330	31%
<u>ARBITRATION</u>	470	100%	579	100%	597	100%	605	100%	733	100%
Hearings Held	105	22%	267	46%	372	62%	502	83%	608	83%
Hearings Scheduled	110	23%	73	13%	71	12%			55	8%
Total	215	45%	340	59%	443	74%			663	91%
Hearing Pending	265	55%	239	41%	154	26%	103	17%	70	9%
<u>FINDINGS RECEIVED</u>	80	100%	116	100%	175	100%	331	100%	573	100%
Tenant Favored	58	72%	99	85%	150	86%	279	84%	512	89%
Landlord Favored	22	28%	17	15%	25	14%	52	16%	61	11%
<u>APPEALS TO THE BOARD</u>	case	#t	case	#t	case	#t	case	#t	case	#t
Total	2	13	8	48	8	48	21	93	37	129
Tenant Initiated							3	3	8	8
Landlord Initiated	2	13	8	48	8	48	18	90	29	121
Accepted	1	10	3	25	3	25	7	46	17	68
Denied	1	3	5	23	5	23	8	36	16	48
Pending	0	0			0		6	11	4	13
<u>APPEAL HEARINGS</u>							7	46	17	68
Tenant Favored							1	5	6	36
Landlord Favored							1	1	2	2
Conciliation							1	10	1	10
Remand									5	5
Pending Decision							1	10	2	8
Scheduled							3	20	1	7

<u>AREA</u>		8/10/79	10/19/79	11/13/79	12/14/79	1/31/80					
Diamond Heights	(94131)	70	25%	107	16%	110	15%	112	13%	120	11%
Tenderloin/Nob Hill	(94109)	28	10%	76	12%	80	11%	92	11%	132	12%
Marina	(94123)	30	11%	64	10%	68	9%	82	9%	99	9%
Inner Richmond	(94118)	27	10%	62	10%	68	9%	73	8%	90	9%
Mission	(94110)	17	6%	58	10%	72	9%	82	9%	99	9%
Civic Center/Downtown	(94102)	19	7%	46	8%	50	7%	60	7%	78	7%
Haight-Ashbury	(94117)	13	6%	46	8%	54	7%	62	7%	70	7%
South of Market	(94103)	9	3%	46	8%	50	7%	54	6%	57	5%
Eureka Valley	(94114)	12	4%	37	6%	41	5%	46	5%	58	6%
Western Addition	(94115)	10	3%	31	4%	35	4%	48	6%	52	5%
Sunset	(94122)	7	2%	24	4%	26	3%	33	4%	40	4%
North Beach	(94133)	8	2%	20	3%	21	3%	32	4%	39	4%
Outer Richmond	(94121)	7	2%	19	3%	24	3%	27	3%	32	3%
Chinatown	(94108)	9	3%	16	2%	20	3%	24	3%	44	4%
Ingleside	(94112)	5	2%	11	11%	12	2%	13	2%	15	2%
Lake Merced	(94132)	8	3%	10	10%	10	1%	10	1%	12	1%
Potrero	(94107)	2	1%	8	1%	11	1%	11	1%	13	1%
Parkside	(94116)	1	0%	4	1%	6	1%	6	1%	9	1%
Bayview	(94124)	1	0%	1	0%	2	0%	1	0%	2	0%
Portola	(94134)	0	0%	1	0%	1	0%	1	0%	2	0%

APPENDIX B - NUMBER AND PERCENTAGE OF PETITIONS BY ZIP
CODE AND AREA

SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

COMMISSIONERS

Leland J. Cole-Chu

Leland J. Cole-Chu, President (Tenant)

Dorothy Lathan

Dorothy Lathan, Vice President (Neutral)

Russell Flynn

Russell Flynn (Landlord)

Ricardo Hernandez

Ricardo Hernandez (Tenant)

VACANCY (Landlord)

ALTERNATES

Stewart Baird

Stewart Baird (Tenant)

Mary Bell

Mary Bell (Landlord)

Manuel F. Neves, Jr.

Manuel Neves, Jr. (Neutral)

Thomas Saunders

Thomas Saunders (Landlord)

VACANCY (Tenant)

EXECUTIVE DIRECTOR

Donna P. Solomon

Donna P. Solomon

